VIRGINIA BLACK MOUNTAIN COAL CO., Inc. *v.* VIRGINIA-LEE CO., Inc., et al.

March 14, 1912.

[74 S. E. 177.]

1. Contracts (§ 183*)—Joint and Several Contracts.—Plaintiff coal company executed three contracts with the three defendant coal companies, each of which were separate in form but identical in terms, and each referred to the respective defendants as "party of the first part" and to plaintiff as "party of the second part," the purpose of the contracts being to market the output of the parties without harmful competition. The second paragraph of each contract provided that the party of the second part would accept all coal delivered by the first party and pay on the 15th of each month, following. Another paragraph required the second party to secure a sufficient car supply. Another paragraph provided that, if a full settlement was not made by the second party within 30 days after due, the first party might cancel the agreement, and the last paragraph provided that "this agreement is to be construed as though all the parties to such agreements had executed one and the same agreement." Held, that the contracts were several, and not joint, so that plaintiff could not join all of defendants in an action for breach of one of them.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 780-785, 788; Dec. Dig. § 183.* 3 Va.-W. Va. Enc. Dig. 385.]

2. Contracts (§ 147*)—Joint or Several Contracts—Intention.—Whether a contract is joint or several or joint and several depends upon the intention of the parties ascertained therefrom, and such intention must prevail over the literal interpretation of detached words and clauses.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 730, 743; Dec. Dig. § 147.* 3 Va.-W. Va. Enc. Dig. 384.]

Error to Circuit Court of City of Norfolk.

Action by the Virginia Black Mountain Coal Company, Incorporated, against the Virginia-Lee Company, Incorporated, and others. Judgment sustaining a plea of abatement by the unnamed defendants, and plaintiff brings error. Affirmed.

RIVERSIDE & DAN RIVER COTTON MILLS CO. *v.* CARTER.

March 14, 1912.

[74 S. E. 183.]

1. Trial (§ 139*)—Injury to Employee—Instructions—Promise to Repair.—In an action for injury to an employee in a dimly lighted

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

place caused by unguarded machinery, an instruction which required the jury to find for plaintiff if he complained to the superintendent of the defective conditions and the superintendent promised to remedy them, but failed to do so within a reasonable time, and if plaintiff continued at work in reliance on such promise, was erroneous as taking from the jury the question whether plaintiff reassumed the risk by continuing the employment after lapse of a reasonable time for remedying the conditions complained of, where it appeared that several weeks intervened beween his first complaint and the accident, and that repeated promises of the superintendent made in the meantime had been broken.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 332, 333, 338-341, 365; Dec. Dig. § 139.* 9 Va.-W. Va. Enc. Dig. 726.]

2. Master and Servant (§ 221*)—Defective Conditions—Promise to Repair—Right of Employee to Rely upon.—An employee may for a reasonable time rely upon his employer's promise to repair defects, but, if he remains in the service after expiration of such time, he assumes the risk arising from the employer's failure to repair.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 638-647; Dec. Dig. § 221.* 9 Va.-W. Va. Enc. Dig. 699.]

3. Master and Servant (§ 233*)—Injury to Machinery Oiler—Contributory Negligence.—An employee cannot recover for injury received while oiling machinery due to a lack of light in the place, if no restriction was placed upon him as to the time of day when the oiling should be done, and if by waiting until later in the day the light would have been sufficient to enable him to perform his work with safety, since ordinary care required him to adopt the safer method.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 681, 684-686, 701-742; Dec. Dig. § 233.* 9 Va.-W. Va. Enc. Dig. 702, 705.]

4. Trial (§ 251*)—Instructions.—In an employee's personal injury action, an instruction that the jury must try the case without being influenced by sympathy, and that they should disregard the relative financial conditions of the parties, as the jury equally with the court was bound by oath to decide according to the law and the facts, was properly refused where punitive damages were not claimed.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 587-595; Dec. Dig. § 251.* 4 Va.-W. Va. Enc. Dig. 222; 5 Va.-W. Va. Enc. Dig. 764.]

5. Damages (§ 181*)—Evidence—Relative Financial Condition of Parties.—In an employee's personal injury action, wherein punitive

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

damages are not claimed, evidence as to the relative financial condition of the parties is inadmissible.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 473, 474, 499; Dec. Dig. § 181.* 4 Va.-W. Va. Enc. Dig. 222; 5 Va.-W. Va. Enc. Dig. 763.]

Error to Corporation Court of Danville.

Action by Felix B. Carter against the Riverside & Dan River Cotton Mills Company. Judgment for plaintiff and defendant brings error. Reversed.

D. Lawrence Groner, for plaintiff in error.
Eugene Withers, for defendant in error.

Note. See editorial, ante, May Number, p. 66. See also leading article ante, p. 161.

NORFOLK FIRE INS. CORPORATION *v.* WOOD.

March 14, 1912.

[74 S. E. 186.]

1. Insurance (§ 377*)—Concurrent Insurance—Forfeiture—Estoppel.—Where defendant insurance company was willing to write $15,000 on plaintiff's property, but plaintiff had refused to permit defendant to write more than $5,000, and, before delivering a policy for $5,000, defendant's agent again requested plaintiff to permit defendant to write the entire insurance, which he refused, whereupon the agent delivered a policy for $5,000 containing a concurrent insurance forfeiture clause, the agent knowing that plaintiff intended to procure additional insurance from others, which he subsequently did without knowledge of such forfeiture provision, defendant in case of loss was estopped to enforce a forfeiture because of such concurrent insurance.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 942, 966, 967, 976-997; Dec. Dig. § 377.* 6 Va.-W. Va. Enc. Dig. 90; 7 Va.-W. Va. Enc. Dig. 764.]

2. Insurance (§ 378*)—Knowledge of Agent—Effect.—Knowledge of an insurer's agent when he delivered a policy to plaintiff and collected the premium that plaintiff intended to take out other insurance pursuant to what plaintiff conceived to be binding agreements with other companies to that effect was notice to the insurer.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 968-997; Dec. Dig. § 378.* 6 Va.-W. Va. Enc. Dig. 90; 7 Va.-W. Va. Enc. Dig. 764.]

Error to Circuit Court, Nottoway County.

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.